WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

POLICY MANUAL UPDATE

December, 2000

Enclosed is the latest update to your Policy Manual. **Please update your Manual, as detailed below, as soon as possible.**

Table of Contents

_____ Discard *entire* Table of Contents (9 pages), dated January, 2000 and replace with new Table of Contents, dated December, 2000 (also 9 pages).

Index

_____ Discard *entire* index (11 pages), dated January, 2000 and replace with new Index, (also 11 pages), dated December, 2000.

Section 3 - Short and Long-term Benefits

_____ Replace Policy 3.1.1R1 "Calculation of Gross Earnings" approved by the Board of Directors on January 20, 2000 (6 pages), with revised Policy 3.1.1R2 approved by the Board of Directors on September 14, 2000, and effective December 1, 2000 (4 pages).

On November 30, 2000, the Governor in Council approved an amendment to section 20 of the Workers' Compensation General Regulations. This amendment, which is effective December 1, 2000, changes the method by which workers' gross average earnings are calculated:

- *calculation of workers' gross average earnings will now be based on workers' normal, or regular earnings (which includes all employment earnings normally paid at the time of the injury); and*
- *the date of recalculation of workers' gross average earnings is extended from 12 weeks to 26 weeks.*

Changes to Policy 3.1.1R2 were made to reflect amendments to the Regulations. The Policy was further revised to remove the specific period of time over which workers' initial earnings profile are calculated (four weeks prior to the loss of earnings) to a more flexible period (one based on the workers' regular pay period).

Added flexibility was also added to the Policy when calculating a worker's long-term earnings profile. Specific employment categories have been deleted from the Policy. The WCB will establish a worker's long-term earnings profiles based on whatever period best represents the worker's loss of earnings resulting from an injury.

Section 9 - Assessments and Collections

_____ Insert new Policy 9.5.4 "Late Reporting of Year-end Subcontractor Report", approved by the Board on November 2, 2000 and effective January 1, 2001 (1 page), immediately following Policy 9.5.3.

Employers are required to report to the WCB on a quarterly basis all subcontractors hired throughout the year. Policy 9.1.3 requires employers, when remitting assessments to the WCB, to include in total assessable payroll the earnings associated with all subcontractors who have do not have coverage under the Act (except for subcontractors who are in an excluded industry).

To assist employers in the subcontractor reporting process the WCB publishes an ***Annual Subcontractor Report.*** *Employers can use the Report as a worksheet throughout the yea. It is available in the Employers' Guide or on the WCB website at www.wcb.ns.ca.*

The Annual Subcontractor Report must be submitted to the WCB by the last day of February in the year following the reporting year. The new Policy 9.5.4 introduces a $50 charge to be levied on employers who do not report the Subcontractor Report on time.

Workers' Compensation Act

_____ Insert at the very end of the Policy Manual, Schedule "A" - Amendments to the *Workers' Compensation General Regulations*, approved by an Order in Council on November 30, 2000.

On November 30, 2000, the Governor in Council approved an amendment to section 20 of the Workers' Compensation General Regulations. The amendment changes the method and timing for calculating workers' gross average earnings (see section 3 above - Short and Long-term Benefits).

TABLE OF CONTENTS

INTRODUCTION

TABLE OF CONTENTS

INDEX

POLICY SECTIONS

1. ENTITLEMENT

OVERVIEW

1.1 Injuries

Back Injuries 1.1.1R
Coverage Police/Fire Fighters Employed in Off-Duty Hours 1.1.2
Claims Adjudication - Processing Continuing Claims 1.1.3

1.2 Occupational Diseases

Guidelines for Automatic Assumption – Injuries prior to January 1, 2000 ..... 1.2.1R
Guidelines for Automatic Assumption – Injuries on or after January 1, 2000 ..... 1.2.1A
Fee Schedule Assessment: Automatic Assumption Claims 1.2.2
Voluntary Autopsy Reports - Deceased Pneumonoconiosis Pensioners 1.2.3
Carpal Tunnel Syndrome 1.2.4R
Occupational Hearing Loss – Injuries prior to January 1, 2000 ..... 1.2.5R
Occupational Hearing Loss – Injuries on or after January 1, 2000 ..... 1.2.5AR
Workplace Noise Levels 1.2.6R
Lead Poisoning 1.2.7R
Lung Cancer - Foundry Workers 1.2.8
Lung Cancer - Coke Oven Workers 1.2.9
Medical Conditions from Coke Oven Work.. s other than Lung Cancer 1.2.10
Lung Cancer in Asbestos Workers 1.2.11
Mesothelioma in Asbestos Workers 1.2.12
Laryngeal Cancer - Asbestos and Nickel Workers 1.2.13

1.3 General

Loss of Wages While Undergoing Active Medical Treatment 1.3.1
Interruption of Medical Treatment - Circumstances Beyond Worker's Control 1.3.2
Rescinded 1.3.3R
Volunteer Fire Fighters 1.3.4
Criteria for psychiatric conditions: occupational stress 1.3.5

1.4 Decision Making

(rescinded) 1.4.1
(rescinded) 1.4.2
Weighing Conflicting Medical Evidence 1.4.3

2. HEALTH CARE

OVERVIEW

2.1 Workers' Expenses

Workers' Travel Expenses 2.1.1R
(rescinded) 2.1.2R
(rescinded) 2.1.3R
(rescinded) 2.1.4R
Clothing Allowance 2.1.5R2
Attendant Allowance 2.1.6
Eyeglasses 2.1.7R
Loss of Personal Items 2.1.8

2.2 Services/Treatments

Spinal Fusion - Second Opinion 2.2.1R
Fee Schedule - Second Opinion Spinal Surgery 2.2.2
Home Breathing Machines 2.2.3
Chemonucleolysis 2.2.4
Treatment: Pain Clinic 2.2.5
Home Oxygen Therapy 2.2.6
Portable Home Oxygen Therapy 2.2.7
Epidural Analgesia and Paravertebral Blocks 2.2.8R

2.3 General

Provision of Health Care Services 2.3.1
Hospital Admissions: Semi-Private 2.3.2
Double Doctoring - Prescriptions 2.3.3
Reimbursement for Generic Drug Substitutes 2.3.4

2.4 Functional Restoration Program

Phase I - Pain Targeted Services 2.4.1R
Phase II - Multi-Faceted Pain Services: Criteria 2.4.2
Program Costs of Phase II 2.4.3
Consideration of Workers who are Beyond 12 Months of the Date of their Injury 2.4.4
Date of Injury 2.4.5
(rescinded) 2.4.6
Normal Recovery Times 2.4.7

3. SHORT-TERM and LONG-TERM BENEFITS

OVERVIEW

3.1 Earnings Profiles

Calculation of *Gross* Earnings 3.1.1R2

Calculation of *Net* Earnings 3.1.2R

3.2 Temporary Earnings-Replacement Benefit (TERB)

Calculation of Temporary Earnings-Replacement Benefit 3.2.1R
Waiting Period Without Compensation (Deductible) 3.2.2R-1
TERB - Hearings, Examinations, Treatments, etc 3.2.3R

3.3 Permanent-Impairment Benefit (PIB)

Calculation of Permanent-Impairment Benefit 3.3.1
Permanent-Impairment Rating Schedule 3.3.2R1
Review of Permanent-Impairment Benefit 3.3.3R
Determining Permanent Impairment Ratings using the Guides to the Evaluation of Permanent Impairment (AMA Guidelines) 3.3.4

3.4 Extended Earnings-Replacement Benefit (EERB)

Calculation of Extended Earnings-Replacement Benefit 3.4.1R
Review of Extended Earnings-Replacement Benefit 3.4.2R

3.5 Estimation of Earning Ability

Definition of *Suitable* Employment 3.5.1
Definition of *Reasonably Available* Employment 3.5.2
Wage Rate to be Used in Estimating Earning Ability 3.5.3

3.6 Annuities

Amounts to be Reserved to Provide Annuity 3.6.1
Annual Reporting of Amount in Annuity Accounts 3.6.2
Payment at Age 65 ..... 3.6.3
Payment When EERB Commuted 3.6.4
Payment Where Intended Recipient Dies Before Becoming Eligible to Receive Payments 3.6.5
Payment Where Intended Recipient Dies After Becoming Eligible for Payments 3.6.6
Apportionment Where More Than One Spouse Qualifies 3.6.7
Interest to be Applied to an Annuity Account 3.6.8
Periodic Payment of Annuities 3.6.9

3.7 Permanent Disability Pensions: Injuries Before March 23, 1990

Pension Benefits 3.7.1
Commutation of Pensions 3.7.2R

3.8 Supplementary Benefits

Eligibility Criteria 3.8.1R2

3.9 General

Maximum Insurable/Assessable Earnings 3.9.1
Duration of ERB and PIB Benefits 3.9.2
Combining of Workers' Compensation Benefits 3.9.3
(rescinded) 3.9.4
Commutation of PIBs and EERBs 3.9.5
Implementation of Appeal Board Decisions on Permanent
Compensation in the Absence of Measurable Impairment 3.9.6
(rescinded) 3.9.7
(rescinded) 3.9.8
(rescinded) 3.9.9
Payment of Interest on Transitional Benefits 3.9.10
Apportionment of Benefits 3.9.11
Inflation-Indexing of Benefits 3.9.12

4. VOCATIONAL REHABILITATION

OVERVIEW

4.1 Entitlement to VR Services

Eligibility for Vocational Rehabilitation 4.1.1
Extent of Vocational Rehabilitation Services 4.1.2
Goals and Objectives of Individual VR Plans 4.1.3
Non-Cooperation by Worker 4.1.4
Attendance in Training Programs 4.1.5
VR - Non-Participation - Circumstances Beyond Worker's Control 4.1.6

4.2 VR Program Expenses

Workplace Modifications 4.2.1
Tools and Equipment 4.2.2
Relocation Assistance 4.2.3

4.3 General

Eligibility of Clients While on Training and Job Search Programs 4.3.1

5. RE-EMPLOYMENT

OVERVIEW

5.1 Eligibility and Coverage

Employer Coverage 5.1.1R
Worker Eligibility 5.1.2
Case Appropriate for Re-Employment 5.1.3

5.2 Nature of Re-Employment Obligations

Determination of Date of Injury for Purposes of Re-Employment 5.2.1
Employer's Obligations Within the Re-Employment Period 5.2.2
Termination Within the Re-Employment Period 5.2.3
Worker Able to Perform Essential Duties of Pre-Injury Employment 5.2.4
Worker Able to Perform Suitable Work 5.2.5
Accommodation 5.2.6

5.3 Defenses and Exceptions

Employer Defenses 5.3.1
Collective Agreements 5.3.2
Established Hiring Practices in Worker's Trade or Occupation 5.3.3
Section 71 of Labour Standards Code 5.3.4

5.4 Enforcement of Obligation

Order to Re-Employ 5.4.1
Penalties Under Section 99 for Breach of Re-Employment Obligations 5.4.2

5.5 Appeals

Re-Employment Appeals 5.5.1

6. SURVIVOR BENEFITS

OVERVIEW

6.1 One-Time Benefits

Death Benefit 6.1.1
Burial Expenses 6.1.2
Expenses for Transportation of Body 6.1.3
Death of a Worker While in Receipt of Compensation 6.1.4

6.2 Periodic Benefits

Survivor Pension 6.2.1R
Survivor Pension - More Than One Spouse Qualifies 6.2.2
Dependent-Child Benefit 6.2.3
Discretionary Benefits to Surviving Dependants 6.2.4
Benefits to Person Standing in Place of Parent 6.2.5
Recalculation of Benefits When One Dependant Ceases to Qualify 6.2.6
Duration of Payments to Dependants 6.2.7R
Annuity 6.2.8R

6.3 General

Death Prior to February 1, 1996 ..... 6.3.1R

7. SPECIALIZED ADJUDICATION

OVERVIEW

7.1 Transitional Claims - Temporary Disability

Benefits On or After February 1, 1996 for Injuries Before February 1, 1996 ..... 7.1.1

7.2 Transitional Claims - Permanent Disability

Recalculation of Awards Where Injury Occurred On or After March 23, 1990 ..... 7.2.1

7.3 Amended Interim Earnings Loss

Statement of Principles 7.3.1
Eligibility for Award 7.3.2
(Rescinded) 7.3.3
Effective Date of Awards 7.3.4
Calculation of Award 7.3.5
Pre-Accident Earnings 7.3.6
Indexing of Pre-Accident Earnings 7.3.7
Post-Accident Earnings - Documentation 7.3.8
Post-Accident Earnings - Canada Pension Plan (CPP) Disability Benefits 7.3.9
Post-Accident Earnings - Permanent Partial Disability Awards 7.3.10
Duration of Benefits 7.3.11
Workers Reaching Normal Retirement Age 7.3.12
Commutation of Awards 7.3.13
Reinstated AIEL Benefit for pre-March 23, 1990 injuries 7.3.14

7.4 Recalculation of Long-Term Benefits Pursuant to Section 228

(rescinded) 7.4.0
(rescinded) 7.4.1
(rescinded) 7.4.2
(rescinded) 7.4.3
(rescinded) 7.4.4
(rescinded) 7.4.5
(rescinded) 7.4.6
(rescinded) 7.4.7

7.5 Compensation for chronic pain for injuries on or after March 23, 1990 and up to January 31, 1996.

(rescinded) 7.5.1

(rescinded) 7.5.2
(rescinded) 7.5.3R
(rescinded) 7.5.4R
(rescinded) 7.5.5
Criteria for compensation for chronic pain 7.5.6

8. INTERNAL APPEALS

OVERVIEW

8.1 Internal Appeals Process

(rescinded) 8.1.1
(rescinded) 8.1.2R
Appeals and Referral to a Hearing Officer 8.1.3R-1
Participants in an Appeal 8.1.4R
(rescinded) 8.1.5
Referrals to Medical Review Commission 8.1.6
Reconsideration Pursuant to s.185(2) Where a Final Decision of the Board Addressing an Issue Has Been Rendered 8.1.7R-1
Requests for reconsideration pursuant to former s.196 of Chapter 10 of the Acts of 1994-1995 ..... 8.1.6

8.2 Referrals to the Chair

Adjournment and Referral of Appeal by Hearing Officer to Chair of Board of Directors 8.2.1
Interim Awards During Adjournment 8.2.2

9. ASSESSMENTS AND COLLECTIONS

OVERVIEW

9.1 Scope of Coverage

Continuous Coverage - Less Than Three Workers 9.1.1R
Special Protection Coverage 9.1.2
Coverage for contractors and subcontractors which employ less than three workers 9.1.3

9.2 Classification of Firms

Multiple Classification - Eligibility 9.2.1
Classification of Firms not Eligible for Multiple Classification 9.2.2

9.3 Rate Setting

Classification, Rate Setting and Experience Rating Process 9.3.1R
Temporary Transition 9.3.2RA

Transition 9.3.2R1
Data Used in Rate Setting at Rate Group Level 9.3.3R
Costs Used for Fatal Claims for Rate Setting 9.3.4
Claims Costs Which are Excluded from Rate Setting 9.3.5R

9.4 Experience Rating

Experience Rating Participation 9.4.1R1
Maximum Merit or Demerit 9.4.2R1
Data Used in Experience Rating 9.4.3R
Claims Costs which are Excluded from Experience Rating 9.4.4R
Costs Used for Fatal Claims for Experience Rating 9.4.5

9.5 Penalties

Charge for Late Reporting of Payroll Statements 9.5.1R
Charge for Unpaid/Overdue Assessments 9.5.2R
Penalty for Failure to Register with the Board 9.5.3R
Late Reporting of Year-end Subcontractor Report 9.5.4

9.6 Apportionment of Claims Costs

Effective Date for Apportionment 9.6.1
Apportionment of Claims Costs under Concurrent Employment 9.6.2
Apportionment of Claims Costs under a Rehabilitation Program 9.6.3
Apportionment of Claims Costs for Learners 9.6.4
Apportionment of Claims Costs for Workers Under 30 ..... 9.6.5
Employer Cost Relief for Overpayment 9.6.6

9.7 Collections

Write-Off of Uncollectible Accounts 9.7.1

9.8 General

Backdating Coverage 9.8.1R
Under Reporting of Payroll 9.8.2R1
(rescinded) 9.8.3
Holdback of Assessment Premium from Contractors and Subcontractors 9.8.4
Definition of Assessable Earnings 9.8.5

10. GENERAL POLICIES

10.1 Reporting of Accidents

Accident Reporting: Duties of Employers 10.1.1R
Accident Reporting - Penalties 10.1.2

10.2 Benefit Overpayments

Recovery of an Overpayment 10.2.1R
Appealing an Overpayment 10.2.2

10.3 Administration

Quality of Service Assurance 10.3.1
Retroactivity of Policy Changes 10.3.2R
(rescinded) 10.3.3
Photocopying of Clients' Files 10.3.4
Access by Employers to Information Contained in Clients' Claim Files 10.3.5
Provision of Information to Canada Pension Plan 10.3.6
Fraud and Misrepresentation 10.3.7R
Investment Policy 10.3.8

GLOSSARY

***WORKERS' COMPENSATION ACT* and REGULATIONS**

Policy Manual Subject Index

NOTE: In general, this Index refers readers to the Policy pertaining to a given subject. Occasionally, however, the Index refers the reader to section(s) of the Act -- this usually occurs when there is no Policy on the subject in question.

A

Policy No.

AIEL (see *amended interim earnings loss*)
access to information, employers 10.3.5
accident reporting
by employer 10.1.1R
penalties 10.1.2
accommodation of work or workplace (see *re-employment*)
adjudication, continuing claims 1.1.3
amended interim earnings loss (AIEL)
Canada Pension Plan benefits 7.3.9
calculation of awards 7.3.5
commutation of awards 7.3.13
duration of benefits 7.3.11
effective date 7.3.4
eligibility 7.3.2
permanent partial disability awards 7.3.10
pre-accident earnings 7.3.6, 7.3.7
principles 7.3.1
post-accident earnings 7.3.8, 7.3.9, 7.3.10
retirement age 7.3.12
reinstated AIEL benefits for pre-March 23, 1990 injuries 7.3.14
annuities
amount of reserve 3.6.1
apportionment re survivor pension 3.6.7
commutation 3.6.4
death of annuitant after eligibility for payment 3.6.6
death of annuitant before eligibility for payment 3.6.5
interest applied to annuity account 3.6.8
payment at age 65 ..... 3.6.3
periodic payment of 3.6.9
reporting of accounts 3.6.2
survivor benefits 3.6.1, 3.6.7, 6.2.8
transitional benefits 7.2.1
appeals (see *internal appeals*)
apportionment of benefits 3.9.11
apportionment of claim costs
concurrent employment 9.6.2
cost relief for overpayments 9.6.6
effective date 9.6.1
learners 9.6.4
rehabilitation program 9.6.3
workers under 30 ..... 9.6.5
asbestos workers 1.2.11, 1.2.12, 1.2.13
assessable earnings, definition 9.8.5
assessments, unpaid or overdue 9.5.2R

attendance, vocational rehabilitation programs 4.1.5
attendant allowance 2.1.6
automatic assumption
fee schedule 1.2.2
processing for injuries on prior to January 1, 2000 ..... 1.2.1R
processing for injuries on or after January 1, 2000 ..... 1.2.1A
autopsy reports, pneumonoconiosis 1.2.3

B

back injuries 1.1.1R
backdating employer coverage 9.8.1R
benefit of the doubt ..... Act, s. 187
benefits, apportionment of 3.9.11
benefits payable, maximum 3.9.3, 7.4.7
beyond worker's control 1.3.2, 4.1.6
burial expenses 6.1.2

C

CPP (see *Canada Pension Plan*)
calculation of awards
amended interim earnings loss 7.3.5
extended earnings replacement benefit 3.4.1
permanent impairment benefit 3.3.1
temporary earnings replacement benefit 3.2.1, 3.2.2R1
Canada Pension Plan, access to information 10.3.6
Canada Pension Plan benefits, amended interim earnings loss 7.3.9
cancer
larynx 1.2.13
lung 1.2.8, 1.2.9, 1.2.11, 1.2.12
carpal tunnel syndrome 1.2.4R
chemonucleolysis 2.2.4
children, dependant 6.2.3, 6.2.4
chronic pain (See *also Functional Restoration Program*)
compensation for chronic pain for injuries after March 23, 1990
and before February 1, 1996 ..... 7.3.12
claims processing 1.1.1R, 1.1.3
classification of employer 9.3.1
clothing allowance 2.1.5R
coke ovens 1.2.9, 1.2.10
collective agreements, re-employment 5.3.2
commutation
amended interim earnings loss awards 7.3.13
annuities 3.6.4
extended earnings replacement benefits 3.9.5
pensions 3.7.2R
permanent impairment benefits 3.9.5
complaints about Board employees= performance 10.3.1

concurrent employment 3.1.1R1
continuous coverage 9.1.1R
contractors and subcontractors 9.1.3, 9.5.4

D

date of injury, re-employment 5.2.1
death benefit 6.1.1
death of annuitant
after eligibility for payment 3.6.6
before eligibility for payment 3.6.5
death of worker awaiting compensation payable ..... Act, s.79
death of worker receiving compensation 6.1.4
death of worker who has permanent impairment rating of 100% ..... Act, s.36
deductible (see *waiting period*)
demerits, experience rating 9.4.2R1
dependent-child benefit 6.2.3
documentation, post-accident earnings, amended interim earnings loss 7.3.8
double doctoring 2.3.3
duration of benefits
amended interim earnings loss 7.3.11
earnings replacement 3.9.2
permanent impairment 3.9.2
survivors' 6.2.7R
duties of employers, accident reporting 10.1.1

E

EERB (see *extended earnings replacement benefit*)
EPEA (see *estimated potential earnings ability*)
ERB (see *earnings replacement benefit*)
earnings
maximum assessable and/or insurable 3.9.1
pre-loss of earnings 3.1.1R2, 3.1.2R
profiles 3.1.1R2, 3.1.2R
earnings replacement benefit (ERB), duration of 3.9.2
employer
access to information 10.3.5
assessment adjustments 9.8.2R2, 9.8.3
accounts, write-offs 9.7.1
classification of 9.2.1, 9.2.2
coverage, backdating 9.8.1R
coverage, general 9.1.1R
coverage, re-employment 5.1.1R
coverage, special protection 9.1.2
experience rating (see *experience rating*)
non-registered 9.5.3R
obligation to re-employ 5.1.2, 5.2.2
rate setting (see *rate setting*)

essential duties (see *re-employment*)
estimated potential earnings ability (EPEA)
reasonably available employment 3.5.2
suitable employment 3.5.1
wage rate 3.5.3
epidural analgesia 2.2.8R
evidence
weighing conflicting medical evidence 1.4.3
expenses
accommodation 2.1.1R
attendant 2.1.6
clothing 2.1.5R
eyeglasses 2.1.7R
meals 2.1.1R
personal items 2.1.8
taxi 2.1.1R
tools and equipment, vocational rehabilitation 4.2.2
travel 2.1.1R
experience rating
costs excluded 9.4.4R
data used 9.4.3R
fatal claim costs 9.4.5
general 9.3.1R
merits and demerits 9.4.2R1
participation 9.4.1R1
extended earnings replacement benefit (EERB)
calculation of 3.4.1R
commutation 3.9.5
review 3.4.2R
transitional benefits 7.2.1
eyeglasses 2.1.7R

F

failure to re-employ, employer (see *re-employment*)
failure to register with Board, employer (see *penalties*)
fatal claims,
benefits (see *survivor benefits*)
experience rating 9.4.5
rate setting 9.3.4
files
access to information 10.3.5
photocopying of 10.3.4
fire fighters
coverage off-duty 1.1.2
volunteer 1.3.4
firm classification, multiple 9.2.1, 9.2.2
former Act pensions 3.7.1
foundry workers 1.2.8
fraud 10.3.7R
Functional Restoration Program

appeal structure 8.1.2R
consideration after 12 months 2.4.4
date of injury 2.4.5
normal recovery times 2.4.7
multi-faceted pain services, criteria (Phase II) 2.4.2
pain targeted services (Phase I) 2.4.1R
program costs 2.4.3

G

generic drug substitutes, reimbursement for 2.3.4
gross earnings, calculation of 3.1.1R2
guidelines for assessment of permanent medical impairment
Injuries prior to January 1, 2000 ..... 3.3.2R1
Injuries on or after January 1, 2000 ..... 3.3.4

H

health care services
chemonucleolysis 2.2.4
epidural analgesia and paravertebral blocks 2.2.8R
Functional Restoration Program 2.4.1, 2.4.2, 2.4.3, 2.4.4, 2.4.5, 2.4.7
General 2.3.1
Home breathing machines 2.2.3
Home oxygen therapy 2.2.6, 2.2.7
Pain clinic 2.2.5
hearing loss
Injuries prior to January 1, 2000 ..... 1.2.5R
Injuries on or after January 1, 2000 ..... 1.2.5AR
hearing officer
appeal and referral to 8.1.3R1
reconsideration of decision 8.1.7R1
hearing participants, internal appeals 8.1.4R
hierarchy of objectives, vocational rehabilitation 4.1.3
holdback of assessment premium from contractors 9.8.4
home breathing machines 2.2.3
home oxygen therapy 2.2.6
home oxygen therapy, portable 2.2.7
hospital admissions, semi-private room 2.3.2

I

implementation of Appeal Board decisions where PMI is not measurable 3.9.6
incarceration, benefits payable during ..... Act, s. 78(1)
indexing pre-accident earnings, amended interim earnings loss 7.3.7
industrial disease (see *occupational disease*)
industrial noise levels 1.2.6R

interest, payment of on transitional benefits 3.9.10
internal appeals
Functional Restoration Program 8.1.2R
hearing officer 8.1.3R1
interim awards 8.2.2
medical review commission 8.1.6
overpayments 10.2.2
participants 8.1.4R
reconsideration of decision (s.185) 8.1.7R1
reconsideration requests pursuant to former s.196 of *Act* 8.1.6
re-employment 8.1.2R
referral to Chair 8.2.1
interruption of treatment, medical 1.3.2
interruption of program, vocational rehabilitation 4.1.6
investment Policy 10.3.8
irregular earnings 3.1.1R2

J-K

job search programs, vocational rehabilitation 4.3.1

L

Labour Standards Code, re-employment 5.3.4
laryngeal cancer, asbestos and nickel workers 1.2.13
lead poisoning 1.2.7R
learner, earnings profile 3.1.1R1
less than three workers, employer 9.1.1R
loss of wages 1.3.1, 3.2.3R
lung cancer
asbestos workers 1.2.11
coke oven workers 1.2.9
foundry workers 1.2.8

M

maximum benefits payable 3.9.3, 7.4.7
maximum insurable and/or assessable earnings 3.9.1
maximum rate change, experience rating 9.4.2R1
medical review commission 8.1.6
medical aid (see *health care services*)
merits, experience rating 9.4.2R1
mesothelioma, asbestos workers 1.2.12
misrepresentation 10.3.7R
multiple classification, ineligible firms 9.2.2
multiple classification of firm 9.2.1
multiple spouses, death of worker 6.2.2

N

net earnings, calculation of 3.1.2R
nickel workers 1.2.13
noise levels, workplace 1.2.6
non-cooperation, vocational rehabilitation 4.1.4
non-participation, vocational rehabilitation 4.1.6
non-registered employers 9.5.3R
notice of appeal (internal) 8.1.3R1

O

occupational disease
- automatic assumption, guidelines 1.2.1
- carpal tunnel syndrome 1.2.4R
- hearing loss 1.2.5R1, 1.2.5AR, 1.2.6R
- laryngeal cancer 1.2.13
- lead poisoning 1.2.7
- loss of lung function, coal miners 1.2.1
- lung cancer 1.2.8, 1.2.9, 1.2.11
- mesothelioma 1.2.12
- pneumonoconiosis 1.2.1, 1.2.3

ongoing claims, processing 1.1.3
other dependants, survivor benefits 6.2.4
overdue assessments 9.5.2R
overpayments
- appeal of 10.2.2
- recovery of 10.2.1R

oxygen therapy 2.2.6
oxygen therapy, portable 2.2.7

P

PIB (see *permanent impairment benefit*)
PPD (see *permanent partial disability*)
pain clinic 2.2.5
paravertebral blocks 2.2.8R
participation rate, experience rating 9.4.1R
payment of annuity
- at age 65 ..... 3.6.3
- periodic 3.6.9

payroll estimates
- (rescinded) 9.8.3
- (rescinded) 9.8.2R2

payroll statement, late submission of 9.5.1R
penalties, employer

accident reporting 10.1.1
failure to re-employ 5.4.1, 5.4.2
failure to register with Board 9.5.3R
late submission of payroll statement 9.5.1R
late reporting of year-end subcontractor report 9.5.4
unpaid or overdue assessments 9.5.2R

pensions, commutation 3.7.2R
pensions, former Act 3.7.1
pensions, survivor 6.2.1R, 6.2.2
permanent disability 3.7.1
permanent impairment benefit (PIB)
calculation of 3.3.1
commutation of 3.9.5
duration of 3.9.2
review of 3.3.3R
transitional benefits 7.2.1
permanent impairment rating schedule
Injuries prior to January 1, 2000 ..... 3.3.2R1
Injuries after January 1, 2000 ..... 3.3.4
permanent medical impairment (PMI)
implementation of Appeal Board decision where PMI not measurable 3.9.6
permanent partial disability awards (PPD)
amended interim earnings loss 7.3.10
awards under former *Act* 3.7.1
personal items, damage or loss of 2.1.8
photocopying, client's files 10.3.4
pneumonoconiosis
autopsies 1.2.3
processing claims 1.2.1
police, coverage off-duty 1.1.2
policy changes, retroactivity 10.3.2R
post-accident earnings, amended interim earnings loss 7.3.9, 7.3.10
pre-accident earnings, amended interim earnings loss 7.3.6, 7.3.7
prescriptions, double doctoring 2.3.3
prison, worker in ..... Act, s. 78(1)

Q

quality of service 10.3.1

R

rate setting, employers
temporary transition 9.3.2RA
transition 9.3.2R1
costs excluded 9.3.5R
data used 9.3.3R
fatal claim costs 9.3.4

general 9.3.1R
rate groups 9.3.3R

re-employment
abilities of worker 5.2.4, 5.2.5
accommodation of work or workplace 5.2.6
appeals 5.5.1
appropriate cases 5.1.3
collective agreements 5.3.2
date of injury, determination of 5.2.1
employer coverage 5.1.1R
employer defences 5.3.1
employment offered 5.2.2, 5.2.4
essential duties 5.2.4
established hiring practices 5.3.3
failure to re-employ 5.3.1
Labour Standards Code 5.3.4
obligations of employer 5.1.2, 5.2.2, 5.2.4, 5.2.5
order of Board to re-employ 5.4.1
penalties 5.4.1, 5.4.2
recurrences during re-employment period 5.2.2
suitable work 5.2.5
termination within re-employment period 5.2.3
time limits re obligation to re-employ 5.1.2
worker eligibility 5.1.2
reasonably available employment 3.5.2
recalculation, survivor benefits 6.2.6
reconsideration
Act, s.185 ..... 8.1.7R1
reconsideration requests pursuant to former s.196 of *Act* 8.1.6
recovery of overpayments 10.2.1R
recovery times, normal 2.4.7
recurrence during re-employment period 5.2.2
recurrence, gross earnings to be used 3.1.1R2
recurrence, of back injury 1.1.1R
referral to vocational rehabilitation 4.1.1
relocation assistance, vocational rehabilitation 4.2.3
respiratory system 1.2.8, 1.2.9, 1.2.11, 1.2.12, 2.2.6, 2.2.7
retirement age, amended interim earnings loss 7.3.12
retraining programs, vocational rehabilitation 4.1.5
retroactivity of policy changes 10.3.2R
review
extended earnings replacement benefit 3.4.2R
permanent impairment benefit 3.3.3R

S

second opinion, spinal fusion 2.2.1R, 2.2.2
self-employment 3.1.1R2
special protection, employer 9.1.2

spinal fusion, second opinion 2.2.1R, 2.2.2
spousal pension 6.2.1R, 6.2.2
standing in place of parent 6.2.5
stress 1.3.5
suitable employment 3.5.1, 7.4.3
supplementary benefits 3.8.1R2
survivor benefits
- annuities 3.6.1, 3.6.7, 6.2.8R
- burial expenses 6.1.2
- death benefit 6.1.1
- dependent-child 6.2.3
- duration 6.2.7R
- former Act 6.3.1R
- other dependants 6.2.4
- recalculation 6.2.6
- spousal pension 6.2.1R, 6.2.2
- standing in place of parent 6.2.5
- survivor pension 6.2.1R, 6.2.2
- transportation of body 6.1.3

T

TERB (see *temporary earnings replacement benefit*)
temporary earnings replacement benefit (TERB)
- calculation of 3.2.1R
- examination or treatment, Board arranged 3.2.3R
- waiting period 3.2.2R1

temporary earnings replacement benefit, transitional benefits 7.1.1
termination of employment during re-employment period 5.2.3
transitional benefits
- payment of interest on 3.9.10
- permanent disability 7.2.1
- temporary earnings replacement benefit 7.1.1

transportation of body 6.1.3
travel expenses 2.1.1R

U

Unemployment Insurance benefits, amended interim earnings loss 7.3.6
Uncollectible employer accounts, write-off 9.7.1
Unpaid assessments 9.5.2R

V

VR (see *vocational rehabilitation*)
Vocational Rehabilitation (VR)
- attendance in training programs 4.1.5
- eligibility 4.1.1
- extent of services 4.1.2

hierarchy of objectives 4.1.3
job search program 4.3.1
non-participation 4.1.6
non-cooperation 4.1.4
plans 4.1.3
relocation assistance 4.2.3
tools and equipment 4.2.2
training programs 4.3.1
workplace modification 4.2.1
volunteer fire fighters 1.3.4

W

waiting period, temporary earnings replacement benefit 3.2.2R1
worker under 30, earnings profile 3.1.1R2
workplace modification
re-employment 5.2.6
vocational rehabilitation 4.2.1
write-off, uncollectible employer accounts 9.7.1

X-Z

POLICY

NUMBER: 3.1.1R2

Effective Date: December 1, 2000

Topic: Calculation of Gross Earnings

Date Issued: December 4, 2000

Section: Short-Term and Long-Term Benefits

Date Approved by Board of Directors: September 14, 2000

Subsection: Earnings Profiles

Policy Statement

Initial Earnings Profile

1. Where a worker's loss of earnings results from an injury, the 'pre-LOE' average weekly gross earnings will initially be calculated based on the normal weekly earnings.

2. Normal weekly earnings means the worker's normal rate of pay prior to the injury, as calculated over the worker's normal pay period. This initial earnings profile will be used during the first 26 weeks the worker receives a Temporary Earnings Replacement Benefit (TERB).

3. Normal weekly earnings includes the worker's regular salary or wages, less earnings-related expenses. Regular Salary or wages includes the following:

   i) regular overtime,
   ii) commissions,
   iii) bonuses,
   iv) vacation pay,
   v) a profit sharing arrangement with the worker's employer,
   vi) tips and gratuities
   vii) taxable benefits, if reportable on a worker's T4 slip, and
   viii) other types of employment income allowable on the "Employment Income" and "Other employment Income" lines of an individual tax return.

   Note: Taxable benefits are included in the worker's earnings profile only for injuries occurring on or after January 1, 2000.

4. For greater certainty, the types of income listed in clause #3 will be included in the initial earnings profile if they form part of the worker's regular pay.

Long Term Earnings Profile

5. Effective week 27 of the claim (i.e. after the worker has received TERB for 26 weeks), a **long-term earnings profile** will be set, which will usually be used for the purposes of any further TERB payable, plus EERB (Extended Earnings-Replacement Benefit) where applicable.

6. For purposes of establishing the long-term earnings profile, and for all workers, the average weekly gross earnings will be calculated based on the worker's actual pre-accident earnings. The worker's pre-accident earnings will include all regular salary or wages, as listed in clause #3, plus federal employment insurance benefits and overtime which is not regular salary or wages.

Note: If the worker received EI maternity or parental benefits during the pre-LOE earnings period used, those benefits and the time period during which they were paid will be excluded from the calculation.

7. The Board will calculate the long-term earnings profile over a period up to three years immediately preceding the worker's loss of earnings. The Board may choose any period that, in the opinion of the Board, allows it to best represent the actual loss of earnings suffered by the worker as a result of the injury.

8. The long-term profile will also be used for establishing a worker's pre-LOE earnings for purposes of Permanent Impairment Benefits (PIB)[1] and Survivor Benefits. Also, if a worker is awarded an EERB prior to week 26 of the claim, the long-term earnings profile will be used.

9. **Workers Under 30 Years of Age (Section 46)**

For purposes of the long-term earnings profile, where the Board determines that the pre-LOE average earnings at the time of the accident do not represent the worker's probable earnings because of the worker's age, the probable increase in earnings may be included in the long term profile. This only applies to workers who have not reached the age of 30 by the time of the accident.

10. If the Board has not received sufficient earnings information to establish a long-term earnings profile within 26 weeks, the earnings used to determine the initial profile may be reduced. An adjustment for any difference between this amount and the long-term earnings profile will be made when the earnings information has arrived. The adjustment will be retroactive to the end of the initial 26 week period.

Learner (Section 45)

11. For a learner [i.e. "an apprentice, or any person who, although not under a contract of service, becomes subject to hazards...as a preliminary to employment" - s. 2(q)]:

For purposes of establishing the long-term earnings profile (which is set after 26 weeks), the Board will generally deem the learner's earnings at the level they would

[1] Where a worker suffers an injury and is awarded a PIB but never had any earnings loss related to the injury (e.g. this may arise in some occupational disease cases, such as hearing-loss), the key date for rate-setting purposes is the date of injury, not the date when the loss of earnings commenced. In occupational disease cases where there is no earnings loss, the date of injury is the date on which the Board determines the worker has a permanent impairment caused by the occupational disease (per Section 12(2) of the Act).

have achieved within the next 12 months.

For purposes of calculating the EERB, the Board will generally deem the learner's earnings at the level of the probable annual earnings of the learner in the learner's home area had they become qualified in their trade or occupation.

Concurrent Employment: (Section 44)

12. For purposes of both the initial and long-term earnings profile, when a worker is employed by more than one employer, the pre-LOE average earnings will be computed based on what the worker was earning from all employers. The word 'employers' is defined as per Section 2(a) of the Act - i.e. employers covered by the *Act*.

Self-Employed Workers with 'Special Protection' Personal Coverage (s.4(7))

13. For purposes of both the initial and long-term earnings profile, pre-LOE average earnings for a self-employed worker with Special Protection will be based on normal weekly earnings, except where personal coverage is less than the worker's normal weekly earnings. In these cases, the Earnings Replacement Benefit will be based on the amount of Special Protection in place at the time of the injury, as verified by the Board's Assessment Department. This will be achieved via Section 4(7) by the Board setting appropriate terms of admission for self-employed workers.

Determination of contractor's earnings

14. To determine the contractor's gross average earnings the WCB will calculate the labour portion of the contract. The labour component is determined by subtracting a proxy amount for materials and equipment from the gross amount of the contract.

15. The following percentages are to be used to calculate the labour portion of a contractor's earnings:

    ii) Labour and Materials: 50%
    ii) Logging (Chain Saw): 75%
    iii) Courier Service: 50%
    iv) Trucking and Leased Equipment: 25%
    v) all others: 100%

Note: The WCB may use a percentage based upon actual labor expenses if actual figures are submitted by the worker.

Recurrences and Reopenings (Section 40(2))

16. Where there is a recurrence of a loss of earnings from an injury more than 12 months after the end of the original loss of earnings from that injury, the worker's average earnings for purposes of the recurrence shall be based on the worker's average earnings before the original loss of earnings, or the worker's average earnings before the recurrence of the loss of earnings, whichever appears to the Board to best represent the worker's actual loss of earnings from the injury.

Loss of Earnings More Than 12 Months After Injury (Section 40(3))

17. Where a worker's loss of earnings from an injury begins more than 12 months after the injury, the worker's average earnings shall be based on the average earnings before the injury, or the average earnings before the loss of earnings, whichever represents the worker's actual loss of earnings from the injury.

Maximum Insurable Earnings (Section 41)

18. A worker's average earnings may not exceed the maximum insurable earnings in place at the time of the injury/initial loss of earnings/recurrence of loss of earnings (whichever is applicable).

Application

This Policy applies to all decisions made on or after December 1, 2000. It replaces Policy 3.1.1R1 issued on January 31, 2000 and effective January 1, 2000.

References

Workers' Compensation Act (Chapter 10, Acts of 1994 - 95) (as amended), Sections 37 - 48.

Workers' Compensation General Regulations, Section 20.

Executive Corporate Secretary

WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

POLICY

NUMBER: 9.5.4

Effective Date: January 1, 2000

Topic: Late Reporting of Year-end Subcontractor Report

Date Issued: December 4, 2000

Section: Assessments and Collections

Date Approved by Board of Directors: November 2, 2000

Subsection: Penalties

Policy Statement

1. Where a covered employer has hired subcontractors during the year, a listing of all subcontractors hired by the employer must be submitted to the WCB by the last day of February following the assessment year.

2. Employers who fail to report subcontractor information to the Workers' Compensation Board by the last day of February following the assessment year, shall be levied a $50 charge.

Application

This Policy applies to the 2000 assessment year onwards.

References

Workers' Compensation Act (Chapter 10, Acts of 1994 - 95), (as amended), Section 129, 208, Policy 9.1.3.

Executive Corporate Secretary

Approved by the Governor in Council of Nova Scotia on this
30th day of November, 2000

Clerk of the Executive Council
2000-614

SCHEDULE "A"

Amendments to the *Workers' Compensation General Regulations*
made pursuant to
clauses 39(1)(d) and 42(1)(b) and Section 184 of Chapter 10 of the Acts of 1994-95,
the *Workers' Compensation Act*

Section 20 of the *Workers Compensation General Regulations* made by the Workers' Compensation Board and approved by the Governor in Council by Order in Council 96-59 dated January 31, 1996, is repealed and the following Section substituted:

20 **(1)** A worker's gross average earnings are the total of

(a) the worker's regular salary or wages; and

(b) after the first 26 weeks of earnings-replacement benefits or for purposes of benefits other than earnings-replacement benefits and extended earnings-replacement benefits, income from

(i) overtime that is not regular salary or wages, and

(ii) federal employment insurance benefits other than those payable as maternity or parental leave benefits.

(2) For the purposes of calculating net average earnings under subsection 39(1) of the Act, earnings-related expenses shall be deducted from gross average earnings.